

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

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PUBLIC SERVICE COMMISSION

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Chairman

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LAWRENCE G. MALONE
General Counsel

JOHN C. CRARY
Secretary



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JAN 12 1998
COMMUNICATIONS

January 9, 1998

95-185

Hon. Magalie Roman Galas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

RE: In the Matters of Implementation of the Local
Competition Provisions of the Telecommunications
Act of 1996 *et al.*, CC Docket No. 96-98, CC Docket
No. 95-185, NSD File No. 96-8, CC Docket No. 92-237,
and IAD File No. 94-102

Dear Secretary Galas:

Enclosed for filing is an original and eleven (11) copies of the Motion for Leave to File Supplemental Petition, Supplemental Petition for Reconsideration, and Affidavit in Support of Supplemental Petition for Reconsideration of the New York State Department of Public Service submitted in the above-captioned matter.

Sincerely,

Lawrence G. Malone

Lawrence G. Malone
General Counsel
New York State
Department of Public Service
Three Empire State Plaza
Albany, New York 12223

Enclosure

cc: A. Richard Metzger, Jr.
Chief
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Federal Comm. Commission
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Washington, D.C. 20554

Geraldine Matise
Chief
Network Services Division
Federal Comm. Commission
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General Counsel

JOHN C. CRARY
Secretary



January 1, 1998

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Common Carrier Bureau
1919 M Street, N.W., Room 544
Washington, D.C. 20554

RE: In the Matters of Implementation of the Local
Competition Provisions of the Telecommunications
Act of 1996 et al., CC Docket No. 96-98, CC Docket
No. 95-185, NSD File No. 96-8, CC Docket No. 92-237,
and IAD File No. 94-102

Dear Ms. Miles:

Enclosed is the Motion for Leave to File Supplemental
Petition, Supplemental Petition for Reconsideration, and
Affidavit in Support of Supplemental Petition for Reconsideration
of the New York State Department of Public Service submitted in
the above-captioned proceeding.

Sincerely,


Cheryl L. Callahan
Assistant Counsel

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of)
)
Implementation of the Local) CC Docket No. 96-98
Competition Provisions of the)
Telecommunications Act of 1996)
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Interconnection Between Local) CC Docket No. 95-185
Exchange Carriers and Commercial)
Mobile Radio Service Providers)
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Area Code Relief Plan for Dallas) NSD File No. 96-8
and Houston, Ordered by the Public)
Utility Commission of Texas)
)
Administration of the North) CC Docket No. 92-237
American Numbering Plan)
)
Proposed 708 Relief Plan and 630) IAD File No. 94-102
Numbering Plan Area Code and)
Ameritech-Illinois)

MOTION FOR LEAVE TO FILE
SUPPLEMENTAL PETITION FOR RECONSIDERATION

FILED BY
THE NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE

Dated: January 9, 1998
Albany, New York

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of)
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MOTION FOR LEAVE TO FILE
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DEPARTMENT OF PUBLIC SERVICE

INTRODUCTION AND SUMMARY

The New York Department of Public Service (NYDPS), pursuant to 47 C.F.R. §1.106(f), hereby moves for leave to file the attached Supplemental Petition for Reconsideration (Supplemental Petition) in the above-captioned proceeding.

The NYDPS filed a Petition for Reconsideration (Petition) on October 6, 1996. The Petition seeks reconsideration of the portion of the Federal Communications Commission's (Commission) Local Competition Second Report and

Order¹ that requires 10-digit dialing uniformly throughout the United States on intra-state calls when an area code overlay is instituted (Petition p. 2).

Since the Petition was filed, new information has become available and circumstances relevant to the Commission's deliberations have changed significantly. New information, available as a result of a New York Public Service Commission (NYPSC) proceeding instituted to determine the best way to provide additional central office codes in New York City,² shows that an area code overlay can be structured with competitively neutral conditions. The overlay plan approved by the NYPSC provides pro-competitive numbering relief consistent with the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Further, the Court of Appeals for the Eighth Circuit has decided in California v. FCC, 1274 F.3d 934 (8th Cir. 1997) that the Commission lacks jurisdiction to promulgate dialing parity rules for intraLATA calls.

The impending exhaustion of central office codes in New York City,³ the results of the NYPSC's investigation and the

¹ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, FCC 96-333, 61 Fed. Reg. 47284 (1996) (Local Competition Second Report and Order).

² NYPSC Case 96-C-1158 - Proceeding on Motion of the Commission to Investigate the Options for Making Additional Central Office Codes Available in the 212 and 917 Area Codes in New York City.

³ It is anticipated that New York Telephone Company (New York Telephone) will exhaust all available central office codes in the 212 area code in June 1998, the 718 area code in early 1999, and the 917 area code in late 1999. Thus, number relief for the 212 area code must be provided by early 1998 and for the other area codes in New York City shortly thereafter.

Eighth Circuit decision are relevant and material to the issues raised in the NYDPS's original Petition. Accordingly, the NYDPS requests permission to file the attached Supplemental Petition.

Respectfully submitted,

Lawrence G. Malone
General Counsel
Public Service Commission
of the State of New York
Three Empire State Plaza
Albany, New York 12223-1350
(518) 474-2510

Of Counsel

Cheryl L. Callahan
Assistant Counsel

Dated: January 9, 1998
Albany, New York

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554 DOCKET FILE COPY ORIGINAL

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AFFIDAVIT IN SUPPORT OF
SUPPLEMENTAL PETITION FOR RECONSIDERATION

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AFFIDAVIT IN SUPPORT OF
SUPPLEMENTAL PETITION FOR RECONSIDERATION

ALLAN H. BAUSBACK, being duly sworn, deposes and states:

1. I am the Acting Director of the New York Department of Public Service (NYDPS) Communications Division. I have been employed by the NYDPS since 1965. I oversee telecommunications regulation for the NYDPS and advise the New York Public Service Commission (NYPSC) on telecommunications matters.

2. The NYPSC instituted a proceeding to consider the appropriate manner for ensuring an adequate supply of telephone

numbers in New York City (NYPSC Case 96-C-1158). This proceeding generated the information presented in this affidavit.

3. It is anticipated that all available central office codes will exhaust in the 212 area code (serving Manhattan) by June 1998, the 718 area code (serving Queens, Brooklyn, Bronx and Staten Island) by early 1999, and the 917 area code (serving primarily wireless customers in New York City) by late 1999. The growth for central office codes in the 212 area code continues unabated. Increased demand may accelerate these dates.

4. The implementation of overlay relief plans will provide the longest possible period of area code relief while causing the least possible inconvenience to consumers. In Manhattan, the Overlay Relief Plan (Overlay Plan) is expected to provide 6.5 years of relief compared to about 5.0 years provided by the most efficient geographic split plan. Similarly, the Overlay Plan would provide 13.0 years of relief for the 718 NPA versus 10.5 years under the most efficient geographic split. Overlay relief plans are less inconvenient than geographic split plans because forced telephone number or area code changes are not necessary. Avoiding forced telephone number changes will save New York City businesses millions of dollars as they will not have to change advertising, stationery, and vehicle lettering. Residential customers will avoid the inconvenience of notifying friends and relatives of their new telephone numbers and/or area codes.

5. The overwhelming majority of the consumers and community groups that either wrote or called the Department of Public Service concerning this issue favored the overlay relief

plans. Similarly, almost all of the speakers that appeared at the seven public hearings held in all five Boroughs of New York City favored the overlay relief plans. Many expressed a strong desire to maintain their current area codes, telephone numbers, and dialing procedures.

6. Most of the CLECs indicated that, while their first preference might be to implement geographic splits, they could accept an overlay relief plan if certain conditions designed to foster competition were included. Those conditions are similar to those provided in paragraph 10 below.

7. Any new area codes assigned to New York City will become rapidly acceptable to the public and will soon be identified as "New York City" area codes by the general public because the new codes will fill quickly. Indeed, the 646 relief code for Manhattan will probably run out of numbers in only 6.5 years and the 347 relief code for the four outer Boroughs will probably exhaust in 13.0 years.

8. There are only three rate centers in Manhattan. The CLECs are overwhelmingly interested in only the rate centers that serve Lower and Midtown Manhattan. The CLECs are currently able to obtain central office codes in all three Manhattan rate centers.

9. The NYPSC concluded that area code overlays, subject to appropriate pro-competitive conditions, would provide the longest possible area code relief for New York City on a timely basis while causing the least amount of customer disruption (PSC Opinion No. 97-18).

10. In order to provide number relief in a competitively equitable manner, the following conditions were imposed by the NYPSC:

- a. continued enforcement of the anti-discrimination provisions of the central office code assignment guidelines;
- b. permanent number portability to ensure competitively neutral access to existing number resources;
- c. implementation of number pooling as soon as technically feasible in order to ensure competitively neutral access to unassigned numbers; and
- d. a comprehensive outreach and education program.

11. Permanent number portability was deployed in several central offices in New York City in November, 1997. Number portability is expected to be deployed in all other New York City central offices by March 31, 1998 (See attached deployment schedule).

12. Pooling of geographic telephone numbers in a local environment is a number administration and assignment process which allocates numbering resources to a shared reservoir associated with a designated geographic area (Industry Numbering Committee [INC]: Report on Number Pooling - Draft No. 5, Issued September 29, 1997). Number pooling helps create a level playing field. Barring technical constraints, number pooling is expected to be available coincident with permanent number portability.

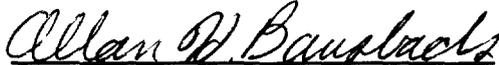
13. There is no evidence that CLECs will disproportionately have to meet number demand by receiving number assignments in the new area code. CLECs are more likely to

experience customer growth by customers changing carriers; and number portability will allow these customers to retain their current telephone numbers. Also, number pooling will ensure that all carriers will have equal access to available numbers in the existing area code regardless of size and timing of market entry.

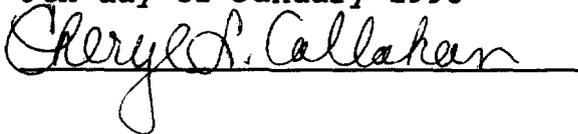
14. The level of telephone number utilization in Manhattan by New York Telephone Company, the incumbent local exchange company, is approximately 80% -- among the highest in the United States. In contrast, the utilization rate for competitive local exchange companies (CLECs) in Manhattan is broadly estimated at 15%.

15. As of the third quarter of 1997, reports indicate that approximately 750 NXXs were available in the 212 area code of which 705 are currently in use. These reports also indicated that the incumbent LEC had 617 NXX codes assigned to it and the CLECs had 88 NXX codes assigned to them.

WHEREFORE, the Supplemental Petition for Reconsideration of the New York State Department of Public Service should be granted.


ALLAN H. BAUSBACK

Sworn to before me this
9th day of January 1998



Notary Public, State of New York
Commission Expires

8/13/98

Schedule for Implementation of
Number Portability in New York City

Office	LNP Ready Date	Market Area
West 50th St.	Nov. 30, 1997	Manhattan
East 13th St. (2nd Ave.)	Nov. 30, 1997	Manhattan
East 79th St.	Nov. 30, 1997	Greater Metro
Hewlown	Nov. 30, 1997	Greater Metro
West Staten Island	Nov. 30, 1997	Greater Metro
Fried Street	Dec. 31, 1997	Manhattan
West 36th St.	Dec. 31, 1997	Manhattan
West 13th St.	Dec. 31, 1997	Manhattan
JFK	Dec. 31, 1997	Greater Metro
Long Island City	Dec. 31, 1997	Greater Metro
West 176th St.	Dec. 31, 1997	Greater Metro
East 27th St.	Dec. 31, 1997	Greater Metro
Forest Hills	Dec. 31, 1997	Greater Metro
Corona	Dec. 31, 1997	Greater Metro
Flushing	Dec. 31, 1997	Greater Metro
Fairview Ave	Dec. 31, 1997	Greater Metro
Crozier Ave.	Dec. 31, 1997	Greater Metro
West 12nd St.	Jan. 30, 1998	Manhattan
West St. (140)	Jan. 30, 1998	Manhattan
East 30th St.	Jan. 30, 1998	Manhattan
West 73rd St.	Jan. 30, 1998	Greater Metro
Williamsburg	Jan. 30, 1998	Greater Metro
Laurelton	Jan. 30, 1998	Greater Metro
Grand Concourse	Jan. 30, 1998	Greater Metro
14th St.	Jan. 30, 1998	Greater Metro

Astoria	Jan. 30, 1998	Greater Metro
Tiebout Ave.	Jan. 30, 1998	Greater Metro
115th Ave. (Ozone Park)	Jan. 30, 1998	Greater Metro
Trotman Ave.	Jan. 30, 1998	Greater Metro
Staten Island New Dorp	Jan. 30, 1998	Greater Metro
140 West St. T	Feb. 28, 1998	Manhattan
World Trade Center	Feb. 28, 1998	Manhattan
Pearl St.	Feb. 28, 1998	Manhattan
E. 13th St. (2nd Ave.)	Feb. 28, 1998	Manhattan
Bridge St.	Feb. 28, 1998	Greater Metro
Varick St.	Feb. 28, 1998	Manhattan
East 38th St.	Feb. 28, 1998	Manhattan
Manhattan Ave.	Feb. 28, 1998	Greater Metro
Convent Ave.	Feb. 28, 1998	Greater Metro
Avenue Y	Feb. 28, 1998	Greater Metro
77th St.	Feb. 28, 1998	Greater Metro
Jamaica	Feb. 28, 1998	Greater Metro
East 167th St.	Feb. 28, 1998	Greater Metro
Thayer St.	Feb. 28, 1998	Manhattan
Rockaway Ave.	Feb. 28, 1998	Greater Metro
Troy Ave.	Feb. 28, 1998	Greater Metro
14th St.	Feb. 28, 1998	Greater Metro
Richmond Hill	Feb. 28, 1998	Greater Metro
West 50th St.	Mar. 31, 1998	Manhattan
East 56th St.	Mar. 31, 1998	Manhattan
East 37th St.	Mar. 31, 1998	Manhattan
E. 37th St. (E. 38th St)	Mar. 31, 1998	Manhattan
Albemarle Road	Mar. 31, 1998	Greater Metro
North Staten Island	Mar. 31, 1998	Greater Metro
E. 150th St.	Mar. 31, 1998	Greater Metro
North Jamaica	Mar. 31, 1998	Greater Metro

Avenue R	Mar. 31, 1998	Greater Metro
Clinton Ave.	Mar. 31, 1998	Greater Metro
Avenue U	Mar. 31, 1998	Greater Metro
Kenmore Place	Mar. 31, 1998	Greater Metro
14th Ave.	Mar. 31, 1998	Greater Metro
Liberty Ave.	Mar. 31, 1998	Greater Metro
Bayside	Mar. 31, 1998	Greater Metro
Avenue I	Mar. 31, 1998	Greater Metro
Bushwick Ave.	Mar. 31, 1998	Greater Metro
Hollis	Mar. 31, 1998	Greater Metro
South Staten Island	Mar. 31, 1998	Greater Metro

CC Docket No. 96-98	In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996
CC Docket No. 95-185	Interconnection Between Local Exchange Carriers and Commercial Mobil Radio Service Providers
NSD File No. 96-8	Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas
CC Docket No. 92-237	Administration of the North American Numbering Plan
IAD File No. 94-102	Proposed 708 Relief Plan and 630 Numbering Plan Area Code and Ameritech-Illinois

CERTIFICATE OF SERVICE

I, Cheryl L. Callahan, hereby certify that an original and eleven copies of the Motion for Leave to File Supplemental Petition and the Supplemental Petition for Reconsideration, with supporting affidavit, filed by the New York State Department of Public Service was sent by overnight mail to Ms. Galas. Copies were sent by First Class United States Mail, postage prepaid, to all parties on the attached service list.


Cheryl L. Callahan
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Dated: January 9, 1998
Albany, New York

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Diane Munns
Iowa Utilities Board
Lucas State Office Building
Des Moines, IA 50319

Before the
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Washington, D.C. 20554

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SUPPLEMENTAL PETITION FOR RECONSIDERATION

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INTRODUCTION AND SUMMARY

On October 7, 1996, the New York State Department of Public Service (NYDPS) filed a Petition for Reconsideration (Petition) of the Federal Communications Commission's (Commission) Local Competition Second Report and Order.¹ NYDPS sought reconsideration of that portion of the Local Competition Second Report and Order that required 10-digit dialing on local calls when an area code overlay was instituted (Petition p. 2).

¹ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 FCC Docket No. 96-98, Second Report and Order Memorandum and Opinion, FCC 96-333, 61 Fed. Reg. 47284 (1996) (Local Competition Second Report and Order).

The Commission has not acted on the NYDPS's petition.² The NYDPS hereby supplements its petition with new information related to number relief in New York City (Point I). We also draw the Commission's attention to recent case law that supports the NYDPS's request that the Commission refrain from imposing 10-digit dialing on local telephone customers. Since the NYDPS's Petition was filed, the Court of Appeals for the Eighth Circuit issued a decision in California v. FCC, 124 F.3d 934 (8th Cir. 1997). The Court vacated the Commission's dialing parity rules (47 C.F.R. §§ 51.205 - 51.215) as applied to intraLATA telecommunications.

DISCUSSION

I. Mandatory 10-Digit Dialing Is Not Necessary To Promote Competition

The stated purpose of the Commission's 10-digit dialing requirement is to prevent dialing disparity and to ameliorate anti-competitive effects of an overlay (Local Competition Second Report and Order at 47329-47331, para. 281 - para 293).³ New information, disclosed in a New York Public Service Commission (NYPSC) proceeding investigating the options for making

² It is anticipated that all available central office codes will be exhausted in the 212 area code (which serves the New York City borough of Manhattan) by June 1998, the 718 area code (which serves the other four New York City boroughs) by early 1999, and the 917 area code by late 1999. Increased demand may accelerate these dates. Timely action must be taken to ensure the continued availability of new telephone numbers in New York City.

³ See also, Pennsylvania Public Utility Comm'n for Expedited Waiver of 47 C.F.R. Section 52.19 for area code 412 Relief, FCC Docket No. 96-98, Order, FCC 97-675 12 FCC Rcd 3783 (1997) (Pennsylvania Order).

additional area codes available in the 212 and 917 area codes in New York City,⁴ demonstrates that this rule is not required to further the pro-competitive national policies of the Act. In fact, it may impede efficient number administration without furthering competition.

Based on an extensive investigation of options for making additional central office codes available in the New York metropolitan area, the NYPSC found that an area code overlay will provide the greatest number relief in New York City.⁵ An area code overlay will provide a longer numbering relief period and significantly less customer inconvenience at a lower overall cost (Affidavit of Allan H. Bausback [Bausback Aff.] ¶ 4). The New York City area has already endured a series of area code changes so further changes should be minimized.⁶ Imposition of the Commission's 10-digit dialing requirement would require all callers in Manhattan to dial 10 digits within their area code although most of the consumers, community groups and speakers at NYDPS public statement hearings overwhelmingly support an area

⁴ NYPSC Case 96-C-1158, Proceeding on Motion of the Commission to Investigate the Options for Making Additional Central Offices Available in the 212 and 718 area codes in New York City.

⁵ NYPSC Opinion No. 97-18, Opinion and Order Concerning New York City Area Codes (Issued and Effective December 10, 1997 (NYPSC Area Code Decision) (Attached).

⁶ A geographic split was implemented in 1985, whereby the 718 area code was established and assigned to the boroughs of Brooklyn, Queens and Staten Island. In 1992, to further prolong the life of the 212 area code, the Bronx was moved from the 212 area code to the 718 area code. The 917 area code was introduced in 1992 as an overlay to provide further relief to the 212 and 718 area codes.

code overlay without mandatory 10-digit dialing (Bausback Aff. ¶ 5).

The Commission imposed the 10-digit dialing requirement on the premise that, otherwise, dialing "disparities" would exist and place CLECs at a competitive disadvantage. Any potential anti-competitive effects that may exist as a result of dialing "disparities" between customers in the "old" area code and customers in the "new" area code will not occur in New York because the circumstances that exist today have significantly changed since the Commission adopted its 10-digit dialing requirements. Specifically, CLECs have a larger pool of numbers available in the existing area code (Bausback Aff. ¶ 15). Moreover, the area code overlay plan adopted by the NYPSC is competitively neutral. It includes the following provisions:

1. Continued application of the anti-discrimination provisions of the central office code assignment guidelines;
2. Permanent local number portability to ensure competitively neutral access to existing number resources;
3. Implementation of number pooling⁷ as soon as it is technically feasible in order to ensure competitively neutral access to unassigned numbers;⁸
4. A comprehensive outreach and education program to acquaint the

⁷ Number pooling as used here would allow the assignment of telephone numbers from the existing area code(s) on an as needed basis without regard to the company serving the customer.

⁸ It is anticipated that number pooling will be introduced in Manhattan by April 1, 1998 and introduced throughout New York City by January 1, 1999, (coincident with the availability of local number portability).